



**RESPONSE UNDER 37 C.F.R. 1.116  
EXPEDITED PROCEDURE  
EXAMINING GROUP 2195**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Sachedina et al.

**Corres. and Mail**

Confirmation No.: 1865

Serial No.: 09/844,470

**BOX AF**

Group Art Unit: 2195

Filed: 04/27/2001

Examiner: Kenneth Tang

Title: DYNAMIC SCALING BACK OF LATCH REQUESTS  
FOR COMPUTING SYSTEM RESOURCES

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on August 12, 2005.

Kevin P. Radigan  
Kevin P. Radigan  
Attorney for Applicants  
Registration No.: 31,789

Date of Signature: August 12, 2005.

To: Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Pre-Appeal Brief Request for Review**

Dear Sir:

This paper is co-filed with a Notice of Appeal from the final rejection mailed May 17, 2005, in connection with the above-designated application. By this paper, Applicants request Pre-Appeal Brief review of the noted final rejection received for the above-identified application. No amendments are being filed with this Request.

## Remarks

Applicants respectfully submit that the final Office Action, and in particular, the asserted combination of Boland et al. (U.S. Patent No. 5,826,079; hereinafter “Boland”) in view of Jones et al. (U.S. Patent No. 5,812,844; hereinafter “Jones”) fails to state a *prima facie* case of obviousness against Applicants’ recited invention. Applicants respectfully submit that a *prima facie* case of obviousness is not stated in the final Office Action in connection with their independent claims for at least two reasons.

1. Applicants recite that each task includes: (1) a probability determining component; and (2) a suspending component. In Applicants’ invention, the tasks themselves have the probability determining component and a suspending component integrated therein as part of the task. This advantageously allows each task to execute its logic independently, as opposed to requiring communications with a central processor scheduler to execute the logic. The affinity scheduler described by Boland is external to the processes to be executed and would not equate to Applicants’ tasks, which are potentially contending for a latch and have the recited probability determining component and the suspending components integrated therein. The Office Action fails to address this aspect of Applicants’ claimed invention, and as such, does not state a *prima facie* case of obviousness against the independent claims presented.

For a further discussion of this point, see Applicants’ Response to Final Office Action mailed June 21, 2005, at pages 2-4.

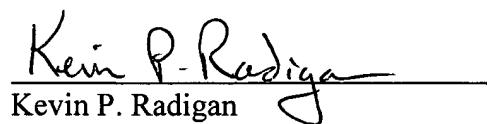
2. Applicants respectfully submit that a *prima facie* case of obviousness is not stated in the Office Action in connection with their independent claims since the independent claims recite that each task includes a probability determining component to dynamically estimate **the probability that the task will successfully acquire the latch**. Assuming, for a moment, that the affinity scheduler in Boland were somehow employing a probability determining component, the resultant system still does not determine an affinity for a particular process to acquire a latch. The final Office Action

does not specifically address this point, but rather, references generally, column 1, lines 59-67, column 2, lines 1-22, and column 3, lines 12-13 of Boland. A careful reading of the cited material in Boland fails to uncover any discussion of the affinity being given to an individual process, or the affinity scheduler itself relating to acquiring a latch *per se*. The functionality recited by Applicants in the independent claims is that the probability determining component dynamically estimates the probability that the task will successfully acquire the latch. Because the cited lines of Boland wherein affinity is described do not relate to acquiring a latch, it is respectfully submitted that the Office Action fails to state a *prima facie* case of obviousness against Applicants' independent claims. For this additional reason, reconsideration and withdrawal of the rejection is respectfully requested.

Further discussion of this point is provided at pages 5 & 6 of Applicants' Response to Final Office Action mailed June 21, 2005.

For the above reasons, Applicants respectfully submit that clear errors have been made in the final Office Action with respect to the rejection of the subject matter recited in their independent claims, and as such, withdrawal of the rejection to claims 1-24 under 35 U.S.C. §103(a) as being unpatentable over Boland in view of Jones is respectfully requested.

Respectfully submitted,

  
\_\_\_\_\_  
Kevin P. Radigan  
Attorney for Applicants  
Registration No.: 31,789

Dated: August 12, 2005.

HESLIN ROTHENBERG FARLEY & MESITI P.C.  
5 Columbia Circle  
Albany, New York 12203-5160  
Telephone: (518) 452-5600  
Facsimile: (518) 452-5579